Broadridge

Global class action annual report

The top 10 most complicated class action asset recovery opportunities of 2019

Ready for Next

A record number of new class action suits were filed in 2019. In addition to new filings, Broadridge has identified more than 175 class action asset recovery opportunities for the year, with total assets amounting to more than $4 billion (USD).

Yet, despite the growing number of filed cases, the class action world remains confusing for many. Methods of determining settlements are complex, processing requirements are arduous, and new legal theories, laws and jurisdictions are increasing. As a result, many claims are denied for foot-faults, failure to plan, and even errors in the claim filing process.

In this report, Broadridge, an active partner supporting the class action needs of the financial industry, highlights the top 10 most complex and complicated class action cases of 2019. Collectively, these settlements total over $2.4 billion (USD).

The class action and administrative process that determines who gets what is becoming ever more complicated. This report aims to detangle the complexities of the class action world to better equip hedge funds, pension funds, asset managers, custodial banks, investment advisors and broker-dealers for future cases.

We hope you will find this report instructive on how to prepare for even the most complex cases, and that it helps you to ensure that your future claims are properly and accurately adjudicated.

The Top 10 Most Complex and Complicated Cases of 2019

10 **BHP Billiton Securities Litigation**
SETTLEMENT: $50,000,000

9 **Orbital ATK Securities Litigation**
SETTLEMENT: $108,000,000

8 **Stichting Investor Claims Against Fortis (Dutch Foundation Case)**
SETTLEMENT: €1,308,500,000

7 **Poseidon Concepts Corp. Securities Litigation**
SETTLEMENT: $34,632,800–$36,606,200 CAD

6 **Cobalt International Energy Inc. Securities Litigation**
SETTLEMENT:
$146,850,000 CASH (Sponsor/GS&Co. Settlement)
$22,750,000 CASH (Underwriter Settlement)
$220,000,000 (Cobalt Settlement) based on potential proceeds from D & O Policies, and claims settled in connection with creditors in the Debtors' Chapter 11 cases

5 **Danske Bank A/S**
(Five different international opt-In options)
SETTLEMENT: TO BE DETERMINED

4 **Concordia International Corp.**
SETTLEMENT: $13,900,000

3 **The Three Complex ADR Cases of 2019**
SETTLEMENT: $14,750,000 (Citigroup)
$9,500,000 (JPM) **$72,500,000** (BNY)

2 **BlackRock Wells Fargo Trustee Class Action**
SETTLEMENT: $43,000,000 CASH
The release of **$70,000,000** of the Reserve Funds withheld or reserved by defendant

1 **The Euro Interbank Offered Rate ("Euribor") Antitrust Litigation**
SETTLEMENT: $182,500,000

FOR MORE THAN A DECADE, BROADRIDGE HAS BEEN ACTIVE IN SUPPORTING THE FINANCIAL SERVICES INDUSTRY WITH REGARDS TO ITS CLASS ACTION NEEDS.

Broadridge continues to expand its suite of services around notification, portfolio monitoring, and class action asset recovery on behalf of institutions, broker-dealers, trust banks, fund managers, and other asset managers as the industry grows and becomes more complex.

OUR METHODOLOGY

Broadridge offers a robust, end-to-end portfolio monitoring and asset recovery service with no jurisdictional limits or product limits. Accordingly, this report looks at cases globally that involve publicly-traded securities or other financial instruments where a class action or collective action mechanism was used. We include cases brought under securities laws or antitrust laws.

Broadridge's proprietary database tracks U.S. and international securities fraud class actions; antitrust class actions involving securities and complex financial products; international collective actions; U.S. SEC and DOJ enforcement actions; and other "mass redress" cases that involve financial instruments that our clients transact in.

We broadly include all of these types of litigations in this report when we discuss class actions. Using the Broadridge database, we identified more than 175 global cases involving securities and/or financial products whose claim filing deadline was in 2019. Leveraging Broadridge's financial services and class action experts, this report provides a comprehensive summary of the 10 most complex cases, and highlights several other cases we deemed to be honorable mentions. Each case profile provides the case facts, case overview, and a detailed summary of the complications and administrative challenges that factored into the case making the list.

Cases are ranked from the 10th most complex to the most complex from the standpoint of a financial institution's ability to recover its funds, or those of its investors and clients. We define complexity from an administration standpoint as:

- The lift and work involved in tracking and monitoring the case
- The difficulty of housing, scrubbing and preparing the data
- Complexities in jurisdictional, judicial and/or filing requirements
- Complex deadlines (e.g., more than one settlement, with different legal rights and deadlines)
- Complexities in the security/product at interest and the underlying data needed to prove a claim
- Complexities in the loss calculation formula
- Competing litigations (multiple law firm/funder groups)
- Any other factors that impacted the ability to file a complete and comprehensive claim and recover assets

Class Actions can be complex. Broadridge simplifies every step. We've included this scannable glossary to make sure everyone has a clear understanding of the terms used in this report.

Certification
The judicial process whereby a court examines whether a case shall be permitted to proceed as a class action.

Claim Filing Deadline
The court-approved date by which all claims must be filed by class members.

Claims Administrator
A court-approved third-party that handles the claims administration process in compliance with the approved settlement agreement.

Class
A large group of individuals who have suffered a similar loss or harm, whose claims are brought in a singular lawsuit.

Class Action
A lawsuit brought by one or more investors on behalf of others who are similarly situated. Under U.S. law, a case is only a class action after it is "certified" by a court.

Class Action Notice
A notice sent out by the claims administrator that describes the cause of action, the class claim, the class itself, how class members can enter an appearance through a lawyer, how members can request exclusion, and information regarding the binding nature of class judgments.

Class Counsel
The lawyers or law firms that are appointed by the court to advocate for the class representative and all the members of the class.

Class Member
A person on whose behalf a class action lawsuit has been filed.

Class Period
The specific time period during which the unlawful conduct is alleged to have occurred.

Complaint
A formal legal document that sets out the facts and legal reasons the filing party ("plaintiff") believes a claim can be brought against the other party ("defendant").

Exclusion Request
The formal request from a class member to be removed from the class.

Final Approval Order
A court order that approves (as is or with modification) a class action settlement.

Lead Plaintiff
A person, group of persons, or entity that is chosen to represent the interests of all class members.

Market Loss
The actual out-of-pocket loss that an investor had for eligible transactions during the class period.

Plan of Allocation
The stated methodology by which a class action recovery is allocated among eligible claimants; literally, it is a plan for allocating the settlement fund.

Opt-Out
The act of one class member electing not to be part of the class action lawsuit.

Preliminary Approval Order
A court order that indicates initial approval of a class action settlement based on the motion and papers filed, and directs the parties to begin the notification process, as well as to solicit opt outs and objections. The settlement is subject to final approval and may be modified.

Proof of claim
A form that is filled out with the necessary information requested by the claims administrator to process a claim.

Pro-Rata
The ratio of settlement funds paid out to each eligible investor of its total Recognized Loss as calculated pursuant to the Plan of Allocation.

Recognized Loss
The loss amount calculated for the claim based on the court-approved Plan of Allocation.

Security
The investment that is part of the particular class action.

Settlement Amount
The funds available to be distributed to the eligible class members pursuant to the Plan of Allocation.

10 BHP Billiton Securities Litigation

SETTLEMENT

$50M

Just the facts

FULL CASE NAME:
In re BHP Billiton Limited Securities Litigation (1:16-cv-01445-NRB)

CLASS DEFINITION: All persons or entities who purchased or acquired American Depositary Receipts ("ADRs") of BHP Billiton Limited or BHP Billiton PLC, from September 25, 2014 through November 30, 2015, inclusive.

THE ALLEGATIONS: Plaintiffs alleged that BHP made false and misleading statements regarding their focus on safety, risk management and their monitoring of Samarco and the Fundão tailings dam.

SETTLEMENT AMOUNT: $50,000,000

SECURITY:
Multiple American Depositary Receipts

COURT: United States District Court, Southern District of New York

JUDGE: Honorable Naomi Reice Buchwald

CLAIM ADMINISTRATOR:
Gilardi & Co. LLC

CLASS COUNSEL:
Robbins Geller Rudman & Dowd LLP

LEAD PLAINTIFFS: City of Birmingham Retirement and Relief System, City of Birmingham Firemen's and Policemen's Supplemental Pension System.

INITIAL COMPLAINT FILED:
February 24, 2016

PRELIMINARY APPROVAL ORDER ENTERED: October 31, 2018

FINAL APPROVAL ORDER ENTERED:
April 10, 2019

CLAIM FILING DEADLINE:
April 2, 2019

An Overview

On November 5, 2015, the Samarco Fundão tailings dam in Brazil burst.

It released 43.7 million cubic meters of iron-ore residue ("tailings") into the Doce River and flooded the nearby Bento Rodrigues district. The resulting floods traveled 620km downriver and caused the loss of 19 lives. The Samarco mine was owned by BHP Billiton and Vale as part of a 50/50 joint venture. As a result of the Samarco dam disaster, numerous litigations were brought against both companies in various countries around the world.

This settlement was reached as part of a class action that was initiated in the United States against BHP Billiton for their alleged false and misleading statements regarding their focus on safety, risk management and monitoring of the Samarco mine, and the Fundão tailings dam. Specifically, it was alleged that BHP Billiton made materially false and misleading statements to investors regarding their commitment to safety, their related safety protocols, the toxicity of the tailings, compliance with local laws, and Samarco's production capacity and risk.

The Administrative Challenges

Settlement fund allocated into a separate type for each security

The settlement fund was split into two separate types for each of the eligible ADR transactions. Specifically, 64% of the Net Settlement Fund was allocated to the ADRs of BHP Billiton Limited, while 36% of the Net Settlement Fund was allocated to ADRs of BHP Billiton plc.

IMPACT: Splitting the settlement fund into separate types vastly increases the difficulty of projecting potential distributions as each type will be subject to a separate pro rata calculation. This complicates the work necessary to audit the Administrator's distribution amounts.

Complex recognized loss calculations

Example 1: Class members are eligible to receive money from one of the pools only if their claim was calculated to have a net overall loss across transactions for both pools of ADRs.

Example 2: ADRs held at the beginning of the class period are used to offset any sales that occurred during the period, but the proceeds from sales of ADRs that have been matched against ADRs held at the beginning of the class period are not used in the calculation of net losses.

IMPACT: The ability to accurately calculate a claim's recognized loss is significant as it serves as the basis for all audits and quality assurance work conducted by the filer. Inaccurate calculations can lead to the loss of money as the filer is unable to accurately review and confirm the determinations of the administrator.

9 Orbital ATK Securities Litigation

SETTLEMENT

$108M

Just the facts

FULL CASE NAME:
Steven Knurr, et al. v. Orbital ATK, Inc., et al.
(1:16-cv-01031-TSE-MSN)

CLASS DEFINITION: People or entities who (i) held stock in Orbital Sciences as of December 16, 2014 and exchanged shares of Orbital Sciences stock for shares of Orbital ATK common stock on or around February 9, 2015 in connection with the merger between Alliant Techsystems Inc. and Orbital Sciences; and/or (ii) purchased Orbital ATK common stock between May 28, 2015 and August 9, 2016, inclusive.

THE ALLEGATIONS:

- The complaint that relates to the Orbital Sciences shares exchanged for Orbital ATK common stock in connection with the merger between Alliant and Orbital Sciences on or around February 9, 2015 (the "14(a) claim") alleged that the Joint Proxy statement issued by Alliant and Orbital Sciences, which was used to solicit shareholder approval of the Merger, contained materially false and misleading statements relating to 1) Alliant's historical financial results, 2) the performance of Alliant's $2.3 billion Lake City contract and 3) Alliant's internal controls. The complaint alleged that these false and misleading statements caused Alliant to be overvalued, causing class members to lose money and depriving them of the ability to make a fully informed shareholder vote.
- The complaint that relates to the Orbital ATK shares purchased during the Class Period, (the "10(b) claim"), alleges that certain Defendants made false and misleading statements relating to 1) Orbital ATK financial results, 2) the Lake City contract's performance, and 3) Orbital ATK's internal controls. The complaint also alleged that as a result Orbital ATK's stock price was artificially inflated.

SETTLEMENT AMOUNT: $108,000,000

SECURITY: 1) Orbital Sciences stock exchanged for Orbital ATK stock on or around February 9, 2015 and/or 2) Orbital ATK common stock purchased or otherwise acquired.

COURT: United States District Court for the Eastern District of Virginia

JUDGE: Honorable T.S. Ellis III

CLAIM ADMINISTRATOR: Gilardi & Co. LLC

CLASS COUNSEL:
Robbins Geller Rudman & Dowd LLP

LEAD PLAINTIFFS: Construction Laborers Pension Trust of Greater St. Louis

INITIAL COMPLAINT FILED: August 12, 2016

PRELIMINARY APPROVAL ORDER ENTERED: February 22, 2019

FINAL APPROVAL ORDER ENTERED:
June 7, 2019

CLAIM FILING DEADLINE: May 30, 2019

An Overview

There are two legal claims for this case.

The first, under Section 14(a) of the Securities Exchange Act of 1934, is for people who exchanged Orbital Sciences shares for Orbital ATK shares in connection with the merger between Alliant and Orbital Sciences. The second, under Section 10(b) of the Securities Exchange Act of 1934, is for those people who purchased or otherwise acquired Orbital ATK common stock during the Class Period, between May 28, 2015 and August 9, 2016, inclusive. The settlement fund will be allocated as follows:

- 42.2% to authorized claimants who held Orbital Sciences shares as of December 16, 2014 and exchanged shares for Orbital ATK shares on or around February 9, 2015.
- 57.8% to authorized claimants who purchased or otherwise acquired ATK common stock during the Class Period.

The Administrative Challenges

Class members may have a claim under two separate securities laws

Class members may have a claim under two separate securities laws: Sections 10(b) and/or 14(a) of the Securities Exchange Act of 1934. Section 10(b) claims are the most common, and such settlements require that a security have been purchased (or acquired) during a specific time period. This case had that, but it also involved a merger, an allegedly misleading proxy statement, and Section 14(a) claims. Thus, to recover in that part of the settlement, unique and separate eligibility considerations had to be met.

IMPACT: Having two different legal claims in a single case causes material impact on the portfolio monitoring process. Specifically, in this case, unlike most, the eligible securities could have been purchased well before the Class Period, so long as other criteria were met. Perhaps even a greater impact is in the claim filing process and dealing with any deficiencies identified by the administrator. Careful tracking, claim preparation, and data management are essential to ensuring maximum recovery.

Shares exchanged in a merger are properly categorized according to case requirements

Class member eligibility under Section 14(a) is based on the number of shares tendered in connection with a merger.

IMPACT: Due to the inconsistent nature of transactional records associated with shares acquired pursuant to a merger, separate reviews must be performed to ensure that any shares exchanged in the merger are properly categorized according to the case requirements. Failure to adequately identify shares acquired via a merger can lead to a claim being found ineligible or of lower value.

Recognized Losses were calculated separately for the Section 10(b) and Section 14(a) settlement classes

Generally, settlements involve a single calculation of losses across all eligible transactions in a case. In this case, the court-approved Plan of Allocation called for loss calculations to be made separately for each settlement class. The separate recognized loss amounts were then subject to allocation of the 57.8% and 42.2%, respective apportionment of the settlement fund.

IMPACT: This challenge requires a more complicated review and quality assurance process to confirm accuracy of the administrator's findings and ensure distributions are accurate for the filer.

8 Stichting Investor Claims Against Fortis (Dutch Foundation Case)

SETTLEMENT

€1.31B

Just the facts

FULL CASE NAME: Binding Settlement between Ageas and VEB, Deminor, SICAF and Stichting FortisEffect (case number: 200.191.713/01)

CLASS DEFINITION: Any investor is eligible to participate who: (1) purchased shares in Fortis SA/NV and/or Fortis N.V. between May 29, 2007 and October 14, 2008; (2) participated in the Company's September 2007 Rights Issue; or, (3) participated in Fortis' June 2008 Accelerated Book-building Offer.

THE ALLEGATIONS: Plaintiffs allege that throughout the relevant period, Fortis misrepresented the value of its collateralized debt obligations, the extent to which its assets were held as subprime-related mortgage backed securities, and the extent to which its ill-fated decision to acquire ABN Amro Holding NV had compromised Fortis' solvency.

SETTLEMENT AMOUNT: €1,308,500,000

SECURITY: ADRs, Scripts

COURT: Amsterdam Court of Appeal

JUDGE: mr. J.W. Hoekzema, mr. M.P. van Achterberg and mr. P.F.G.T. Hofmeijer-Rutten

CLAIM ADMINISTRATOR: Computershare Investor Services PLC

CLASS COUNSEL: Stichting FORsettlement (VEB, Deminor, SICAF, Stichting FortisEffect – claimant organizations)

LEAD PLAINTIFFS: N/A

INITIAL COMPLAINT FILED: May 20, 2016 (Petition for Binding Declaration)

PRELIMINARY APPROVAL ORDER ENTERED: N/A

FINAL APPROVAL ORDER ENTERED: April 13, 2018 (Binding Declaration)

CLAIM FILING DEADLINE: July 28, 2019

An Overview

Prior to its collapse in 2008, Fortis was the largest financial services company in Belgium and the Netherlands.

Based in Brussels, Fortis was held by two parent companies operating as one: Fortis SA/NV in Belgium and Fortis N.V. in the Netherlands. In March 2010, Fortis announced that the company name would be changed to 'Ageas,' in order to represent the company's identity transformation from a 'bancassurer' to an international insurance company. The plaintiffs allege that throughout the relevant period, Fortis misrepresented the value of its collateralized debt obligations, the extent to which its assets were held as subprime-related mortgage backed securities, and the extent to which its ill-fated decision to acquire ABN Amro Holding NV ('ABN Amro') had compromised Fortis' solvency. The plaintiffs also allege that investors lost up to 90% of the value of their investments as a result of these alleged misrepresentations. In just one year, from the end of 2007 to the end of 2008, reported shareholder equity fell from €33 billion to €6.8 billion.

The Administrative Challenges

Dutch collective settlement procedures

The Dutch collective settlement process is relatively new, and materially different than the U.S class action settlement administration process. Under the Dutch collective settlement process, a Dutch Foundation — a representative organization formed under Dutch law — brings a legal proceeding in its own name to protect the interests of investors. When a party chooses to "participate in the Foundation," it assumes no financial risk and does not need to become an actual litigant in the legal proceeding itself, akin to a US class action. However, once a Foundation earns its "representative" status, any settlements entered by the Foundation, and declared binding by the Dutch Court, will have a class-wide effect on all potential claimants.

IMPACT: Since the claim process is different from a standard class action, claimants must ensure all steps required to file have been completed. Failure to properly file a claim or opt out from the settlement will be deemed a waiver of rights to claim damages from the releasees.

Limitation period continues to run

One important aspect to be aware of with respect to the Dutch process is that joining the Foundation before settlement does not toll the limitations period of the party's claims.

IMPACT: Each individual or firm must be aware that if a Foundation case falls apart or does not come to a settlement prior to the limitations period expiring, they may be barred from bringing another suit for recovery. Foundations do their best to mitigate this risk (i.e. enter into tolling agreements). However, individuals and/or firms must be aware of the limitations period in each case to ensure their rights are preserved.

Documentation required at filing

This settlement requires all claimants to submit supporting documentation to prove the claim. Business records, or data kept by a financial institution in the ordinary course of business, are not enough to prove a claim in this case. Failure to provide adequate supporting documentation for all transactions in addition to the data set will lead to rejection of the claim.

IMPACT: All filers are required to submit the supporting documentation needed to prove the claim before verification of the claim will take place. Institutions that had many class period transactions will need significant planning and clean preparation work to prove their claims and maximize recovery.

7 Poseidon Concepts Corp. Securities Litigation

SETTLEMENT

$34.6 TO 36.6M CAD

Just the facts

FULL CASE NAME: *In the Matter of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership and Poseidon Concepts Inc.* (1301-04364) (Canadian class action); *In re Poseidon Concepts Securities Litigation* (1:13-cv-01213-DLC) (U.S. class action)

CLASS DEFINITION: The class includes anyone who purchased or otherwise acquired Poseidon Concepts Corp. securities on or before February 14, 2013.

THE ALLEGATIONS: Plaintiffs allege that starting from its inception in November 2011, Poseidon improperly recorded tens of millions of dollars in phantom revenue that was not recognized in accordance with applicable accounting standards. As a result, plaintiffs contend that a false image of a prosperous, highly profitable and rapidly expanding public company was created.

SETTLEMENT AMOUNT: Between $34,632,800 CAD and $36,606,200 CAD

SECURITY: Common Stock

COURT: Court of Queen's Bench of the Province of Alberta; United States District Court for the Southern District of New York

JUDGE: Honourable Madam Justice K. Horner (Canadian Insolvency Proceedings); Honorable Denise L. Cote (U.S. class action)

CLAIM ADMINISTRATOR: Epic Class Action Services Canada

CLASS COUNSEL: Canadian class action: Jensen Shawa Solomon Duguid Hawkes LLP, Siskinds LLP, Siskinds Demeules LLP and Paliare Roland Rosenberg Rothstein LLP. (U.S. class action: The Rosen Law Firm).

LEAD PLAINTIFFS: Franz Auer (Canadian class action); Gerald Kolar (U.S. class action)

INITIAL COMPLAINT FILED: February 20, 2013 (Canadian class action); February 22, 2013 (U.S. class action); April 9, 2013 (Canadian Insolvency Proceedings)

PRELIMINARY APPROVAL ORDER ENTERED: April 6, 2018 (Amended Plan of Compromise and Arrangement)

FINAL APPROVAL ORDER ENTERED: September 25, 2018 (Approval of Global Settlement and Related Matters)

CLAIM FILING DEADLINE: February 21, 2019

An Overview

Poseidon, a public company based in Calgary, Alberta, was created in November 2011 as a spin-off from Open Range Energy Corp.

As a result of the spin-off, Poseidon's common shares traded on the Toronto Stock Exchange under ticker symbol "PSN." On February 14, 2013, Poseidon disclosed that an investigation conducted by a special committee of its board of directors had resulted in a preliminary determination that between $95 million and $106 million of the company's purported $148 million revenue booked during the first nine months of 2012 should not have been recognized and that the company would be restating its financial statements.

On the same day as this disclosure, Canadian securities regulators issued a cease trade order that prohibited trading in Poseidon's securities. Poseidon's common shares were delisted from the Toronto Stock Exchange. Soon after, Poseidon commenced insolvency proceedings in both Canada and the United States and substantially all its assets were sold.

The Administrative Challenges

Multiple eligible security types

There are three types of shares that are included in this matter: (1) Poseidon common shares received as a result of the restructuring of Open Range Energy Corp. on or around November 1, 2011, (2) offering shares purchased pursuant to the Prospectus dated January 26, 2012 at $13, and (3) secondary market shares purchased between November 4, 2011 and February 14, 2013.

IMPACT: First, identifying these types of shares through a standard portfolio monitoring process is difficult because the acquisition may not be reflected as a "purchase" in the underlying transactional data. Second, even after the transactions have been identified as eligible, additional work is required to ensure all data is populated into the required filing format prior to submission. Failure to accomplish either can lead to a failure to file, a reduced distribution, or a rejected claim.

Complex recognized loss calculations

For this case, shares are determined to be eligible or non-eligible based on their respective purchase and sales dates. Both eligible and non-eligible shares are used to first determine whether a claimant has suffered a net loss. Once that is determined, the provisional entitlement calculations determine the amount of the loss. That amount will be included in the total of all provisional entitlement to determine a claimant's compensation from the net settlement Fund.

IMPACT: Complex recognized loss calculations increase the amount of both time and expertise required to accurately calculate each claim's recognized loss amount. An incorrect calculation can lead to claims not being filed and will lessen the ability to review and challenge an administrator's determination, if needed.

An international exchange

Eligible securities were those listed on the TSX ("Toronto Stock Exchange") in Canada.

IMPACT: Requires a higher level review of the transactions to confirm the transaction occurred on the correct exchange.

6 Cobalt International Energy Inc. Securities Litigation

SETTLEMENT

$257M

Just the facts

FULL CASE NAME:
In re Cobalt International Energy Inc. Securities Litigation
(4:14-cv-3428)

CLASS DEFINITION: All persons and entities who purchased or acquired Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and/or Cobalt 3.125% Convertible Senior Notes due 2024 (collectively "Cobalt Securities") between March 1, 2011 and November 3, 2014, inclusive, and were damaged. Also included within the settlement class are all persons and entities who purchased or otherwise acquired shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or around (i) February 23, 2012 (ii) January 16, 2013 and (iii) May 8, 2013. Also included within the Settlement Class are all persons and entities who purchased or otherwise acquired Cobalt convertible senior notes on the open market and/or pursuant or traceable to registered public offerings on or around (i) December 12, 2012 and (ii) May 8, 2014.

THE ALLEGATIONS: Plaintiffs alleged that settling defendants violated the federal securities laws by, among other allegations, making false and misleading statements regarding Cobalt's business partners and oil wells in Angola, and selling Cobalt Securities during the class period while in possession of material non-public information about Cobalt's Angolan operations.

SETTLEMENT AMOUNT: $146,850,000 in cash (the "Sponsor/GS&Co. Settlement")
$22,750,000 in cash (the "Underwriter Settlement")
$220,000,000 (the "Cobalt Settlement"), based on potential proceeds from D&O policies and claims settled in connection with creditors in the debtors' Chapter 11 cases

SECURITY: Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and Cobalt 3.125% Convertible Senior Notes due 2024

COURT: United States District Court, Southern District of Texas/Houston Division

JUDGE: Honorable Nancy F. Atlas

CLAIM ADMINISTRATOR: Epiq Systems, Inc.

CLASS COUNSEL: Enwistle & Cappucci LLP and Bernstein, Litowitz, Berger & Grossmann LLP

LEAD PLAINTIFFS: GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (the "GAMCO Funds")

INITIAL COMPLAINT FILED: November 30, 2014

PRELIMINARY APPROVAL ORDER ENTERED: November 2, 2018 and November 29, 2018

FINAL APPROVAL ORDER ENTERED: February 13, 2019

CLAIM FILING DEADLINE: April 4, 2019

An Overview

Cobalt is a Houston-based oil and gas exploration company focused mainly on off-shore drilling in Angola and the Gulf of Mexico.

This securities class action alleged that during the class period and in the offering materials for the offering of Cobalt Securities that occurred during the class period, certain settling defendants misled investors about Cobalt's operations in Angola, including certain business partners in Angola and the quality of its oil wells there. Further, it was alleged that the sponsor defendants violated insider trading law by selling Cobalt common stock while in possession of material non-public information about Cobalt's Angolan operations. Additionally, it claimed that investors in Cobalt Securities suffered economic harm when the truth about the nature of Cobalt's Angolan business partners and the quality of the oil wells was revealed during a series of disclosures.

The Administrative Challenges

Settlement fund allocated into three groups

The settlement fund is allocated into three groups depending on the security and the corresponding Security Act claims.

IMPACT: Splitting the settlement fund into separate pools vastly increases the difficulty of projecting potential distributions, as each pool will be subject to a separate pro rata calculation. This complicates the work needed to audit the Administrator's distribution amounts.

Complex recognized loss calculations

Example 1: Common stock shares may be eligible under Section 10(b), Section 11 and Section 20(A) claim losses depending on when the purchase occurred during the class period and whether the purchases may have may occurred during (or were traceable to) three (3) different offerings that occurred during the class period.

Example 2: For common stock shares there was a reverse stock split that occurred during the 90-day look-back period, adding further complexities to accurate determination of shares sold and ending holding position for proper implementation of the Plan of Allocation.

Example 3: 2019 and/or 2024 notes may be eligible under Section 10(b) and/or Section 11 Act claim losses, depending on when the purchase occurred during the class period and whether the purchase was made in or was traceable to a public offering of the securities.

Example 4: All claims are subject to a market loss cap with respect to all purchases or all securities that occurred during the class period.

Example 5: Calculations will be performed on a pro rata basis for all recognized losses in each of the groups and then aggregated to determine the final distribution for each Authorized Claim.

IMPACT: The ability to accurately calculate a claim's recognized loss is significant as it is the basis for all audits and quality assurance work conducted by the filer. Inaccurate calculations can lead to the loss of money as the filer is unable to accurately review and confirm the determinations of the administrator.

5 Danske Bank A/S: Four different international opt-in options

SETTLEMENT

Litigation Pending

An overview of all four cases

Four competing international litigations, with different law firms, different legal funders and, in some cases, differing legal theories and damage theories, were brought against the bank after it was allegedly involved in a long-running money laundering scheme at one of its branches.

Any interested client must weigh the various litigations and determine which provides the best opportunity for recovery.

THE ALLEGATIONS: Plaintiffs allege that the company was involved in one of the largest money laundering scandals in European history, involving over €200 billion (US$233 billion) of largely suspicious transactions between 2007 and 2016 emanating from Danske's small outpost in the former Soviet Republic of Estonia. By October 5, 2018, Danske's shares had dropped to a four-year low following an announcement that the U.S. Department of Justice had initiated a criminal investigation.

Since the initial disclosures of Danske's misconduct, its share price has declined more than 45%, from approximately 250 DKK ($38.36) in February 2018 to 136.80 DKK ($20.99) as of November 16, 2018. Danske is currently facing multiple criminal and regulatory investigations in Denmark, France, the United Kingdom, the United States and Estonia.

These are among the most significant allegations of money laundering that have ever been made against a bank, due to both the magnitude of damages Danske Bank is alleged to have caused and the nature of the alleged coverup.

SEE LITIGATION PENDING CHART PAGES 18-19 > > >

The Administrative Challenges

International opt-in

First, this collective action is an opt-in litigation and not a settled class action. To participate, you must get involved before the settlement process and be part of the litigation. Claimants must work with a law firm and litigation funder, and the process can be longer and more involved.

Second, in many opt-in litigations, there are options. Often, like here, there are multiple cases on parallel tracks. In order to weigh the various options, claimants must understand the differences between the cases, their legal theories, damage calculations, and potential outcomes. They must also understand how those differences impact their losses and trading patterns, which requires a very individual review. Finally, the different firms and funders may have different theories and contractual terms.

IMPACT: There are several steps that must be completed to be part of the litigation. Data for potential damage calculation must be provided to the funder. Claimants who wish to remain anonymous at first can have an agent do this on their behalf. After a review of the information, clients who are interested in pursuing a claim can enter into a funding agreement, at which point fulsome data and claim filing can proceed, provided that it is legal for the firm and/or client to participate in matters like this. Further, since this must be done before a settlement is entered into in order to participate, the process is longer and active participation in the litigation may be necessary.

Danish Law and claim filings

The participants who have filed or will file a lawsuit and "claim" via the opt-in litigation will be known to the court and the defendants. This is a requirement under Danish law.

IMPACT: Many potential participants may not want to file since disclosure of their identity to the defendants and the court may impact potential business or other legal dealings they may have with the potential defendants.

Additional filing costs

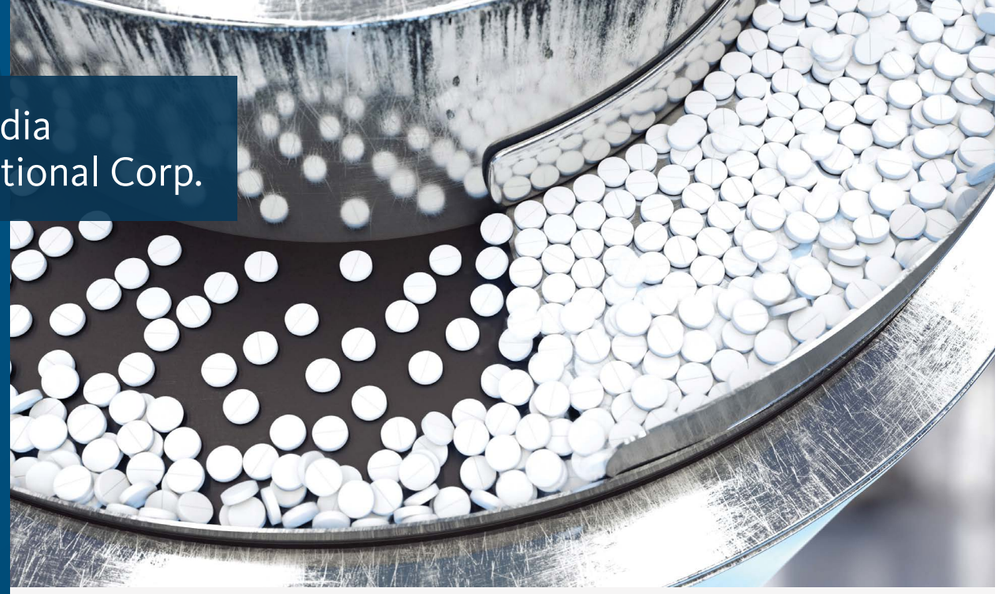
These litigations may involve additional costs and additional contractual relationships.

IMPACT: Unlike a U.S. class action, each potential claimant is treated separately, and each individual case has its own funding and paperwork requirements. Typically, there are fees associated with filing in these matters. Funding agreements and costs will differ depending on the case in which the claim is filed, and the law firm and litigation funder.

Just the facts

	CASE 1	CASE 2	CASE 3	CASE 4
ELIGIBLE INVESTORS	Institutional investors that purchased ordinary shares of Danske Bank A/S ("Danske") on the Copenhagen Stock Exchange during the relevant period	Investors who have acquired common shares of Danske Bank A/S ("Danske") on the Copenhagen Stock Exchange during the relevant period and held some of these shares on February 2, 2018	Investors who purchased and/or acquired Danske Bank A/S ("Danske Bank") securities during the relevant period	Investors who purchased or owned Danske Bank A/S ("Danske Bank") ordinary shares traded on the Copenhagen Stock Exchange during the relevant period
RELEVANT PERIOD	January 13, 2014 until November 29, 2018	February 5, 2014 until February 1, 2018	February 7, 2013 until October 24, 2018	January 1, 2007 until December 27, 2019
PAYMENT AMOUNT	Litigation Pending	Litigation Pending	Litigation Pending	Litigation Pending
SECURITY	DANSKE BANK AS ORD Share Capital ORD DKK10	DANSKE BANK AS ORD Share Capital ORD DKK10	DANSKE BANK AS ORD Share Capital ORD DKK10; DANSKE BANK MTN 2.059%33 Medium Term Notes Eur 2.0590; DANSKE BANK AS BD 6.125% Short Term Notes USD; DANSKE BANK AS MT 2.091%32 2.091% Non Pref Snr Notes 07/08/32 Eur 621; DANSKE BANK AS NT 0.805%36 Medium Term Notes Eur	DANSKE BANK AS ORD Share Capital ORD DKK10; DANSKE BANK AS NT 0.805%36 Medium Term Notes Eur; DANSKE BANK AS MT 2.091%32 2.091% Non Pref Snr Notes 07/08/32 Eur 621; DANSKE BANK AS BD 6.125% Short Term Notes USD; DANSKE BANK MTN 2.059%33 Medium Term Notes Eur 2.0590
FILING COUNTRY	Denmark	Denmark	Denmark	Denmark
LITIGATION FUNDER	Burford Capital	Deminor Recovery Services	Grant & Eisenhofer P.A. and DRRT	International Securities Associations and Foundations Management Company Ltd.
COUNSEL	Lundgrens	Elmann Advokatpartnerselskab	Grant & Eisenhofer P.A. and DRRT (Global Counsel) and Halling-Overgaard Advokatfirma (Local Counsel)	Németh Sigetty Advokatpartnerselskab (supported by US firms Pomerantz LLP and Lieff Cabraser Heimann & Bernstein; German firm TILP Litigation; and Dutch firm Lemstra Van der Korst)
REGISTRATION DEADLINE	October 31, 2019	May 1, 2019	August 15, 2020 (revised)	July 31, 2020 (updated)

4 Concordia International Corp.



SETTLEMENT

$13.9M

Just the facts

FULL CASE NAME: *Landry v. Concordia International Corp., et al* (500-06-000834-164) (the "Quebec Action"); *Valliere and Paul v. Concordia International Corp., et al* (CV-17-584809-00CP) (the "Ontario Action").

CLASS DEFINITION: All persons and entities who acquired securities of Concordia International Corp., known as Concordia Healthcare Corp., prior to June 27, 2016 that are or were listed for trading on the TSX or on alternative trading platforms in Canada, during the period from November 12, 2015 to and including August 11, 2016, and held some or all of those securities at the close of trading on August 11, 2016.

THE ALLEGATIONS: Plaintiffs alleged misrepresentations and omissions of material facts relating to Concordia's business practices and public filings and statements.

SETTLEMENT AMOUNT: $13,900,000

SECURITY: Securities of Concordia that are or were listed for trading on the TSX or on alternative trading platforms in Canada

COURT: Quebec Superior Court

JUDGE: Honourable Justice Pierre-C. Gagnon S.C.J.

CLAIM ADMINISTRATOR: Trilogy Class Action Services

CLASS COUNSEL: Strosberg Sasso Sutts LLP and Morganti & Co., P.C. for the Ontario Class Action and Faguy & Co. for the Quebec Class Action

LEAD PLAINTIFFS: Ronald J. Valliere, Shauntelle Paul and Robert Landry

INITIAL COMPLAINT FILED: December 22, 2016 (Quebec Action) October 19, 2017 (Ontario Action)

PRELIMINARY APPROVAL ORDER ENTERED: April 6, 2018 (Amended Plan of Compromise and Arrangement)

FINAL APPROVAL ORDER ENTERED: October 2, 2018 (Order authorizing a class action for settlement purposes) October 26, 2018 (Settlement Approval Order)

CLAIM FILING DEADLINE: March 19, 2019

An Overview

This is a Canadian class action that required filers to complete a "Calculation of the Distribution and Maximum Settlement" as part of their claim submission.

On August 12, 2016, Concordia issued a corrective disclosure, in which its founder and former Chief Executive Officer announced that the company was lowering its earnings guidance to reflect the impact of competition on several products in its North America segment as well as the effect of foreign exchange rates. In doing so, Concordia reduced its 2016 projected revenues from $1.02–1.06 billion to $859-888 million and reduced its adjusted EBITDA from $610–640 million to $510–540 million. The corrective disclosure also informed the public that Concordia's Chief Financial Officer was stepping down and that the company's board of directors had unanimously agreed to suspend its $0.075/common share quarterly dividend. As a result, Concordia's stock price on the Toronto Stock Exchange fell roughly 54.1% within 10 trading days following the corrective disclosure.

The Administrative Challenges

An international exchange

Securities had to be listed on the TSX ("Toronto Stock Exchange") in Canada.

IMPACT: This requires a higher-level review of the transactions to confirm the transaction occurred on the correct exchange.

Calculations required by claimant as part of claim filing

This settlement administration had the unique judicial requirement of requiring claimants to include with their claim complete calculations. This unusual requirements means that the class member must have a full understanding of the Plan of Allocation and do this work before submitting its claim.

IMPACT: The claim form instructs that each class member must perform a 15-step calculation as part of the filing for each eligible claimant. Failure to do so, and do so correctly, could result in a reduced payout or rejected claim.

Claim filing required detailed supporting documentation

In addition to the normally required transactional files, claimants were also required to provide detailed supporting documentation for each trade, even if thousands or tens of thousands of trades were submitted.

IMPACT: Supporting documentation for each transaction of qualified shares must also be provided. This creates a significant administrative burden on financial institutions who file large claims with numerous transactions, or numerous claims on behalf of numerous clients. Planning in advance and properly preparing claims is critical or else claims will be rejected. In addition, the voluminous supporting documents also create additional opportunities for error by the claims administrator, so careful review of their review and calculation of your claim is critical to ensure accurate payment amount.

Last-in, first-out (LIFO)

The Plan of Allocation uses the principle of last-in first-out (LIFO)—wherein securities are deemed to be sold in the opposite order that they were purchased—in the calculation. In other words, the last securities purchased are deemed to be the first sold.

IMPACT: This type of calculation is not typical in most securities matters. Given that class members are responsible for calculating their own claims, this can cause issues in determining the true last in and first out transactions. Further, it is our experience that filers and even claims administrators do not apply LIFO matching consistently, so additional care is needed.

3 The Three Complex ADR Cases of 2019

Just the facts

SETTLEMENT

$9.5M
JPMorgan

$72.5M
Bank of New York Mellon

$14.8M
Citigroup

JPMORGAN ADR FX

FULL CASE NAME: *Merryman, et al. v. JPMorgan Chase Bank, N.A.* (1:15-cv-09188-VEC)

CLASS DEFINITION: All people or entities who were holders (directly or indirectly) of the securities listed in Appendix 1 of the notice from November 21, 2010 to July 18, 2018, or the securities listed in Appendix 2 of the notice from November 21, 2012 to July 18, 2018.

SETTLEMENT AMOUNT: $9,500,000

SECURITY: American Depositary Receipts ("ADRs") 55 unique CUSIPS

COURT: United States District Court, Southern District of New York

JUDGE: Honorable Valerie Caproni

CLAIM ADMINISTRATOR: Kurtzman Carson Consultants LLC

CLASS COUNSEL: Kessler Topaz Melter & Check LLP

LEAD PLAINTIFFS: Benjamin Michael Merryman, Amy Whittaker Merryman Trust, B Merryman and A Merryman 4th Generation Remainder Trust (the "Merryman Plaintiffs") and Chester County Employees Retirement Fund.

INITIAL COMPLAINT FILED: November 21, 2015

PRELIMINARY APPROVAL ORDER ENTERED: July 18, 2018

FINAL APPROVAL ORDER ENTERED: November 22, 2019

CLAIM FILING DEADLINE: September 19, 2019

BANK OF NEW YORK MELLON ADR FX

FULL CASE NAME: *In re The Bank of New York Mellon ADR FX Litigation* (16-CV-00212-JPO-JLC)

CLASS DEFINITION: All people or entities that held (directly or indirectly) any American Depositary Share (also known as an American Depositary Receipt, or "ADR") during the class period, where the defendant acted as the depositary sponsored by an issuer that is identified in the Appendix of the Notice.

SETTLEMENT AMOUNT: $72,500,000

SECURITY: 586 unique CUSIPS

COURT: United States District Court, Southern District of New York

JUDGE: Honorable J. Paul Oetken

CLAIM ADMINISTRATOR: Kurtzman Carson Consultants LLC

CLASS COUNSEL: Kessler Topaz Meltzer & Check LLP and Lieff Cabraser Heimann & Bernstein LLP

LEAD PLAINTIFFS: David Feige, International Union of Operating Engineers Local 138 Annuity Fund, and Annie L. Normand (collectively, "Named Plaintiffs") and Diana Carofano and Chester County Employees Retirement Fund ("Intervenor Plaintiffs" and, together with Named Plaintiffs, "Lead Plaintiffs").

INITIAL COMPLAINT FILED: October 26, 2016

PRELIMINARY APPROVAL ORDER ENTERED: January 17, 2019

FINAL APPROVAL ORDER ENTERED: September 17, 2019

CLAIM FILING DEADLINE: August 15, 2019

CITIGROUP ADR

FULL CASE NAME: *Merryman, et al. v. Citigroup, Inc., et al.* (1:15-cv-09185-CM-KNF)

CLASS DEFINITION: All people or entities (1) who received cash distributions from the Depositary- sponsored American Depositary Receipts ("ADRs") listed in Appendix 1 of the Notice during the class and/or (2) who currently own the Depositary-sponsored ADRs listed in Appendix 1 of the Notice.

SETTLEMENT AMOUNT: $14,750,000

SECURITY: American Depositary Receipts ("ADRs") 23 unique CUSIPS

COURT: United States District Court, Southern District of New York

JUDGE: Honorable Colleen McMahon

CLAIM ADMINISTRATOR: Kurtzman Carson Consultants LLC

CLASS COUNSEL: Kessler Topaz Meltzer & Check LLP

LEAD PLAINTIFFS: Benjamin Michael Merryman, Amy Whittaker Merryman Trust, B Merryman and A Merryman 4th Generation Remainder Trust (the "Merryman Plaintiffs") and Chester County Employees Retirement Fund and Stephen Hildreth.

INITIAL COMPLAINT FILED: November 20, 2015

PRELIMINARY APPROVAL ORDER ENTERED: September 4, 2018

FINAL APPROVAL ORDER ENTERED: July 12, 2019

CLAIM FILING DEADLINE: August 12, 2019

An Overview

Plaintiffs allege that during the class period the defendant, as a depository bank for the issuance of certain American Depositary Receipts, systematically deducted impermissible fees for conducting foreign exchange ("FX") from dividends and/or cash distributions issued by foreign companies and owed to ADR holders.

The Administrative Challenges

Old class periods

Old class periods requiring aged data (each class started between 10 and 30 years ago)

IMPACT: Typically, most financial institutions and individuals only keep copies of statements, broker confirmation and house data relating to their accounts for seven (7) years. As such, given the length and the start of these class periods, it is hard for a class member to (i) provide transaction information longer than 7-10 years and (ii) provide any supporting documentation. This could severely limit class members' ability to provide all potential damaged ADRs and reduce or eliminate their recovery.

Numerous eligible CUSIPs

IMPACT: Portfolio monitoring to determine eligibility is vastly more complicated. Claim preparation and filing can take hundreds of hours just to get the data in the proper format and confirm that all the eligible CUSIPS are identified in the trade data. Significant quality assurance measures are also needed to ensure accuracy and completeness on the part of both the filer and the claims administrator.

Unique calculations

Unique calculations for calculating recognized loss amount per ADR per year

IMPACT: Due to the number of CUSIPS involved, if the class member has multiple CUSIPS over the span of the class period, the individual calculation for each unique CUSIP for each specific year is arduous. Each individual CUSIP for each year must be cross-referenced to the provided table to obtain the average margin per year.The calculation is the gross amount of dividends and cash distributions received by the damages class member for that ADR per year multiplied by the calculated average margin for ADR ("margin") per year set forth in Table 1 in the Plan of Allocation.

2 | BlackRock Wells Fargo Trustee Class Action

SETTLEMENT

$43M

Cash

$70M

of the Reserve

Just the facts

FULL CASE NAME: *BlackRock Core Bond Portfolio et al. v. Wells Fargo Bank, National Association* (656587/2016)

CLASS DEFINITION: All persons or entities who purchased or otherwise acquired a beneficial interest in a security issued from one of the 271 RMBS Trusts listed in Exhibit 2 to the stipulation and (i) hold on the date on which the Court enters an order finally approving the settlement or (ii) held at any time on or after June 18, 2014, but no longer hold as of the date on which the Court enters an order finally approving the settlement.

THE ALLEGATIONS: Plaintiffs allege that defendant, as trustee for certain RMBS Trusts, breached its contractual and common law duties by failing to enforce Trust repurchase claims when it discovered mortgage loans that allegedly breached representations and warranties made by the entities (or their successors) that sold the mortgage loans to the trusts, and failing to provide notices to cure known servicing violations to the servicers responsible for servicing the mortgage loans in the trusts.

SETTLEMENT AMOUNT: $43,000,000 in cash and the release of $70,000,000 of the reserve

SECURITY: Residential mortgage-backed securities trusts

COURT: Supreme Court of the State of New York, County of New York

JUDGE: Justice Andrew Borrok

CLAIM ADMINISTRATOR: JND Legal Administration

CLASS COUNSEL: Bernstein Litowitz Berger & Grossmann, LLP

LEAD PLAINTIFFS: 175 plaintiffs involved—BlackRock (various funds); DZ Bank AG, PIMCO (various funds); Prudential (various funds) and TIAA-CREF (various funds)

INITIAL COMPLAINT FILED: June 18, 2014

PRELIMINARY APPROVAL ORDER ENTERED: January 30, 2019

FINAL APPROVAL ORDER ENTERED: May 6, 2019

CLAIM FILING DEADLINE: July 2, 2019

An Overview

This class action was brought on behalf of certificate holders in 271 residential mortgage-backed securities trusts for which the defendant serves as trustee.

The complaint alleges that the defendant failed to discharge its duties as trustee of 271 residential mortgage-backed securities trusts governed by pooling and servicing agreements, indentures, and sale and servicing agreements, among other agreements (collectively, the "governing agreements") created between 2004 and 2008. The legal claims for this class action include breach of express and implied contractual duties under the governing agreements, and common law breach of duties.

The Administrative Challenges

Complicated security type

Unlike most cases, which involve a company's common stock, this case involved residential mortgage-backed securities trusts.

IMPACT: First, portfolio monitoring is complicated by the fact that many institutions do not store and track residential mortgage-backed securities in the same way they do the stock and bonds of a corporation. Filers must create one-off procedures to identify and export them. Second, the claims filing process becomes vastly more complicated because the data is generally in a different format than a normal data extract. Significant work is needed to format and review data before a submission can be filed.

Numerous eligible securities

This settlement involved 271 residential mortgage-backed securities trusts, consisting of more than 4,500 individual CUSIPs.

IMPACT: This challenge impacts a variety of areas of the case. First, portfolio monitoring is made more complicated by the size of the searches and resulting data exports. Second, the time required to prepare and file claims can be increased exponentially. Finally, significant quality assurance measures are needed to ensure accuracy and completeness of the files before they can even be filed.

Unusually complicated loss formula

The court-approved Plan of Allocation was exceptionally complicated in several ways. For example, the calculation is divided into a 10-step process using different charts and formulas.

IMPACT: This challenge leads to a more complicated and involved review and quality assurance process to confirm the accuracy and completeness of the Administrator's findings and to ensure an accurate recovery.

1 The Euro Interbank Offered Rate ("Euribor") Antitrust Litigation

SETTLEMENT

$182.5M

Just the facts

FULL CASE NAME:
Sullivan et al. v. Barclays plc et al. (13-cv-2811)

CLASS DEFINITION: All Persons and entities who transacted in Euribor Products between June 1, 2005 and March 31, 2011

THE ALLEGATIONS: This class action alleged violations of federal antitrust law, the Commodity Exchange Act, the Racketeering Influenced and Corrupt Organizations Act (RICO), and common law based on the alleged manipulation and conspiracy to manipulate Euribor interest rates by the defendants.

SETTLEMENT AMOUNT: $182,500,000

SECURITY: Interest rate swaps, forward rate agreements, futures, options, structured products, *and any other instrument or transaction related in any way to Euribor.*

COURT: United States District Court, Southern District of New York

JUDGE: Judge P. Kevin Castel

CLAIM ADMINISTRATOR: A.B. Data

CLASS COUNSEL: Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP

LEAD PLAINTIFFS: Stephen Sullivan, White Oak Fund LP, California State Teachers' Retirement System, Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P., FrontPoint Australian Opportunities Trust, any subsequently named plaintiff(s), and any of their assignees that may exist now or in the future, including but not limited to Fund Liquidation Holdings LLC.

INITIAL COMPLAINT FILED:
February 12, 2013

PRELIMINARY APPROVAL ORDER ENTERED: December 19, 2018

FINAL APPROVAL ORDER ENTERED:
May 17, 2019

CLAIM FILING DEADLINE: July 31, 2019

An Overview

This is an antitrust class action about the alleged manipulation of the European Interbank Offered Rate or "Euribor."

Euribor is a benchmark interest rate impacting numerous financial products (Euribor products) based on the rates leading banks charge when loaning money to other banks overnight. Plaintiffs alleged that defendants manipulated Euribor and the prices of Euribor products through various channels. For example, plaintiffs allege that the banks that made daily Euribor submissions to Thomson Reuters falsely reported their costs of borrowing in order to financially benefit their Euribor product's positions. Plaintiffs also allege that defendants coordinated those false reports with other competitor banks (the alleged collusion).

This lawsuit involves hundreds (or thousands) of different financial products that were impacted by Euribor, including, but not limited to, various types of interest rate swaps, forward rate agreements, futures, options and other structured products.

While this class action is by and large an antitrust lawsuit, the plaintiffs have asserted a variety of legal causes of action in addition to the Sherman Act and the Commodity Exchange Act, such as the Racketeering Influenced and Corrupt Organizations Act (RICO), and state common law.

The Administrative Challenges

Numerous eligible securities/products

Unlike most cases, this settlement does not involve a single security with an easily traced security identifier. In fact, it does not even contain numerous eligible securities with known security identifiers, such as the three ADR class actions discussed above. Rather, this complicated settlement covers a wide range of financial products impacted by Euribor, called "Euribor products". These "Euribor products" include any and all interest rate swaps, forward rate agreements, futures, options, structured products, and any other instrument or transaction related in any way to Euribor, including but not limited to Euribor futures contracts and options on the New York Stock Exchange ("NYSE") or London International Financial Futures and Options Exchange ("LIFFE") , Chicago Mercantile Exchange ("CME") Euro currency futures contracts and options, Euro currency forward agreements, Euribor-based swaps, Euribor-based forward rate agreements and/or any other financial instruments that reference Euribor.

IMPACT: The huge number and variety of eligible securities in this case makes portfolio monitoring vastly more complicated. Claim preparation and filing can take hundreds of hours just to format the data as required by the Administrator. Significant quality assurance measures are needed to ensure accuracy and completeness of the claimant's own file, as well as the Administrator's work. Further, cases as complicated as this all but ensure a complex audit and deficiency process. To handle the claims administrator's requests, all data will need to be in order. Because mistakes can happen, all work—the claimant's and the administrator's—should be checked and audited to ensure maximum recovery. Finally, for firms recovering on behalf of multiple clients and/or accounts, putting those funds back into the proper account can be complex, and care should be taken.

ADMINISTRATIVE CHALLENGES CONTINUED ON PAGE 28 > > >

The Administrative Challenges (continued from page 27)

Unusually complicated loss formula

The Court-approved Plan of Allocation—the economic formula used to divide up the settlement—was exceptionally complicated.

Example 1: Certain categories of transactions will be evaluated by applying the Euribor artificiality in the applicable tenors directly to the transaction, e.g., the interest payment or purchase or sale price.

Example 2: Legal risk discount: A 15% legal risk discount applies to futures transactions. A 20% legal risk discount applies to OTC transactions with non-defendants.

Example 3: Distribution based on total adjusted volume. 10% of the net settlement fund will be distributed according to the settlement administrator's determination of each qualified claimant's total adjusted volume on their transactions, provided that there will be a guaranteed minimum payment provision.

IMPACT: First, a deep understanding of the legal and economic principles in the plan is necessary to build an appropriate algorithm to calculate the damages of a claim. Second, it is particularly important in a complicated case like this to ensure proper handling of each claim, and each Euribor product, by the claims administrator.

This is not simply a purchaser class.

Most settlements provide asset recovery opportunities to those financial institutions that purchased an eligible security during the class period. Accordingly, longtime holders or class period sellers typically cannot recover. Not so, for the Euribor Antitrust Litigation. In this case, financial institutions and their clients who purchased, sold, held, traded, or otherwise had any interest in Euribor products during the class period had significant asset recovery opportunities.

IMPACT: First, portfolio monitoring becomes vastly more complicated, especially when automated scripts are used to look for purchasers. Bespoke processes are needed. Second, special care is needed when preparing claim files to ensure all eligible transactions are pulled. Typically, when all eligible securities were purchased before the class period, no claim would be filed. In this case, such an account is eligible and must be filed.

Honorable Mentions

FOR COMPLICATED ASSET RECOVERY OPPORTUNITIES IN 2019

Alibaba Group Holding Limited (Two Cases)

(1:15-md-02631-CM (Non-IPO) & CIV535692 (IPO))

SETTLEMENT AMOUNT:
Combined $325,000,000
($250,000,000: Non-IPO; $75,000,000: IPO)

SUMMARY: There were two separate actions taken against Alibaba Group Holding Limited with different alleged violations of federal statutes: one with respect to an IPO and the other during a specific date range when shares were purchased or acquired not as a result of the IPO. The security involved in both matters was the American Depositary Shares, and in the non-IPO matter, options were also eligible.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
One of the first complications in cases like this, when there are multiple cases for similar securities, is knowing which to file in. Since these cases are separated between IPO and non-IPO eligibility, which are based on different alleged violations, filing in one does not preclude filing in the other. Since the securities involved are American Depositary Shares and Options, knowing whether one is even eligible is vastly more complicated. Claim preparation and filing can take hundreds of hours just to get the data in the proper format and confirm that all the eligible CUSIPS are identified in the trade data. Significant quality assurance measures are needed to ensure accuracy and completeness.

Banco Bradesco S.A.

(1:16-cv-04155)

SETTLEMENT AMOUNT:
$14,500,000

SUMMARY: This is a Brazilian bribery case covering preferred American Depositary Shares—Bradesco PADS. The Bradesco PADS underwent a series of stocks splits during the class period, which added to the complexity of the Plan of Allocation calculations.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
The series of stock splits that occurred during and after the class period added another layer to an already complicated Plan of Allocation calculation. As a result, the Plan of Allocation required an additional step to adjust for the splits in the purchase and sale prices. In addition, the Plan of Allocation also required a separate calculation to determine the "out of pocket losses" that were used to calculate the claimants' "lesser of" amount, which was needed to determine the final recognized loss per transaction.

Bank of New York Mellon ADR FX ERISA

(Case No 15-CV-10180)

SETTLEMENT AMOUNT:
$12,500,000

SUMMARY: The proposed settlement seeks to resolve a lawsuit brought by plaintiffs that alleged the Bank of New York Mellon breached its fiduciary duties and engaged in prohibited transactions under ERISA when the Bank, as the depositary to ADRs held by ERISA entities, allegedly deducted impermissible fees when converting foreign currency in the form of dividends and/or cash distributions issued by foreign companies. The class period lasted from 1/1/1997 to 12/20/2018.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
The Claims Administrator identified certain ERISA entities that held at least one BNYM ADR that issued a dividend during the settlement class period. Identified class entities do not need to take any action to be eligible to receive a payment from the settlement but there was an opportunity to challenge the data and calculation; since the case included over 3,000 ADR CUSIPs and 31,000 unique ADR/Dividend record dates, this was not easy to do.

Deutsche Bank RMBS
(2016-0717)

SETTLEMENT AMOUNT:
$95,000,000
($15M for state and local relief and $80M for consumer relief)

SUMMARY: This case was settled in connection with an investigation conducted by the Maryland Attorney General's Office, which is also handling the administration.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
The first challenge is determining eligibility: since RMBS are not always found in the general data provided by a client, additional reviews of the transactions are required. A second challenge is that the case has a very dated class period (January 1, 2002 to December 31, 2009), which creates challenges in identifying potentially eligible trades.

SNC-Lavalin Group Inc.
(CV-12-453236-00CP and 500-06-000650-131)

SETTLEMENT AMOUNT:
$110,000,000 CAD

SUMMARY: This large Canadian settlement involved eligible trades that occurred on the Toronto Stock Exchange. The case also involved an older class period that lasted from November 6, 2009 to February 27, 2012. The Plan of Allocation required that shares be held at end of class period; however, it contained different formulas for sales that occurred during several time periods after the class period ended and a separate calculation for shares still held at the time of claim filing.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
The first challenge is determining eligibility. Since the exchange was not based in the U.S., additional review in transactions is necessary. The second complication is the age of the class period. Lastly, the case had an unusually complicated loss formula or Plan of Allocation.

In re United Development Funding IV Securities Litigation
(3:15-cv-4030-M)

SETTLEMENT AMOUNT:
$10,435,725

SUMMARY: According to the complaint, UDF IV is a real estate investment trust ("REIT") under the larger United Development Funding ("UDF") umbrella. The complaint alleges that the defendants made false and/or misleading statements and/or failed to disclose certain information. As a result there are multiple class periods based on when it is alleged that misleading statements were made or schemes were conducted.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
The first challenge is that the case consists of multiple class periods. Each security involved a separate and unique class period. Having multiple class periods in a single case greatly impacts the portfolio monitoring process, especially if an automated process is used. The second challenge is that recognized losses were calculated separately for each class.

Taberna Capital Management, LLC
(File No. 3-16776)

SETTLEMENT AMOUNT: $21,600,000

SUMMARY: The Securities and Exchange Commission established a fair fund when it determined that during restructuring transactions between certain Taberna collateralized debt obligations and the issuers of those underlying obligations, which took place between 2009 and 2012, Taberna Capital Management retained Exchange Fees that should have been paid to the Taberna collateralized debt obligations.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
This case was complicated because the class included collateralized debt obligations ("CDOs") rather than equity securities and contained numerous class periods starting in 2009 and lasting between seven and eight years.

Terex Securities Litigation
(3:09-cv-02083-RNC)

SETTLEMENT AMOUNT: $10,000,000

SUMMARY: This securities class action, brought on behalf of investors of Terex Corporation, was a traditional securities fraud class action. Investors alleged that defendants made false and misleading statements about Terex's business and financial results.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
This case had one significant complication—the age of the class period (February 20, 2008 to February 11, 2009).

Vocation Limited
(VID434/2015)

SETTLEMENT AMOUNT: TBD

SUMMARY: This case is taking place in Australia against Vocation Limited, which operates as a full-service vocational education and training (VET) provider. The main argument for bringing this case was that the applicant alleged that Vocation made misleading or deceptive statements and failed to disclose required information in its prospectus; contravened the continuous disclosure requirements of the Corporations Act 2001; or otherwise made statements that were misleading or deceptive. The applicant further alleged that PricewaterhouseCoopers is liable to class members for loss caused by making certain statements while retained to carry out an audit of Vocation's FY2014 financial report. As this case is currently before the Federal Court of Australia, in order to participate, claimants had to passively participate in the action.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
Similar to the Danske Bank matters, any person who wishes to participate in filing a claim must have a funding agreement with the Funding Partners and law firms involved, and complete and submit a Registration Form. The multi-step process to submit a potential claim requires anonymous data to be provided for a potential damage calculation, and a review of information if the client is interested in pursuing a claim before a funding agreement and claim form will be filed. It is also necessary to ascertain whether the firm or its clients can legally participate in matters like this. Any person who does not wish to be part of the settlement must opt out by the specified deadline. Failure to do either file a claim or opt out will leave the person with no further recourse.

Wells Fargo & Company
(3:16-cv-05479-JST)

SETTLEMENT AMOUNT: $480,000,000

SUMMARY: This case was based on the allegations that the defendants made a series of misrepresentations and omissions about a key element of their business. The complaint alleged that the defendants failed to disclose that thousands of their employees were opening unauthorized deposit and credit card accounts without the customers' consent or knowledge as part of their cross-selling business model.

ADMINISTRATIVE COMPLICATIONS AND IMPACT:
Due to the sheer size of the settlement and the number of potential claimants that owned shares during the affected class period, this case requires the preparation of large claim filings, and compiling the data can be burdensome. Further, cases as large as this all but ensure a complex audit and deficiency process due to the number of trades involved.

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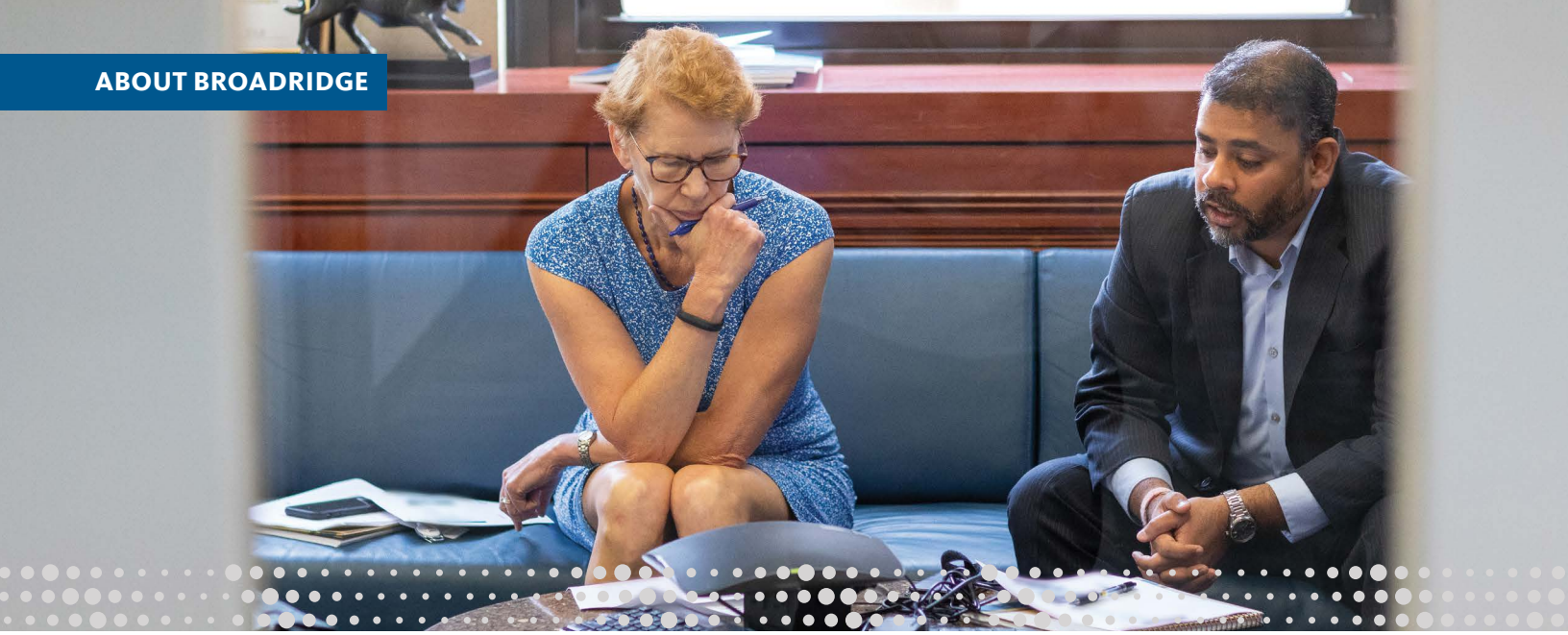

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